

matter to another presiding officer for development of a record. In the latter event, unless the Commission provides specific directions to the presiding officer, that officer shall determine the procedure to be followed and who shall present evidence, subject to applicable provisions of law. The hearing must begin as soon as possible. In the case of an attorney, if no appeal is taken of a suspension, or, if the suspension is upheld at the conclusion of the appeal, the presiding officer, or the Commission, as appropriate, shall notify the State bar(s) to which the attorney is admitted. The notification must include copies of the order of suspension, and, if an appeal was taken, briefs of the parties, and the decision of the Commission.

(4) A suspension exceeding one (1) day is not effective for seventy-two (72) hours from the date the suspension order is issued. Within this time, a suspended individual may request a stay of the sanction from the appropriate reviewing tribunal pending appeal. No responses to the stay request from other parties will be entertained. If a timely stay request is filed, the suspension must be stayed until the reviewing tribunal rules on the motion. The stay request must be in writing and contain the information specified in §2.342(b). The Commission shall rule on the stay request within ten (10) days after the filing of the motion. The Commission shall consider the factors specified in §2.342(e)(1) and (e)(2) in determining whether to grant or deny a stay application.

[69 FR 2236, Jan. 14, 2004, as amended at 77 FR 46592, Aug. 3, 2012]

§2.315 Participation by a person not a party.

(a) A person who is not a party (including persons who are affiliated with or represented by a party) may, in the discretion of the presiding officer, be permitted to make a limited appearance by making an oral or written statement of his or her position on the issues at any session of the hearing or any prehearing conference within the limits and on the conditions fixed by the presiding officer. However, that person may not otherwise participate in the proceeding. Such statements of

position shall not be considered evidence in the proceeding.

(b) The Secretary will give notice of a hearing to any person who requests it before the issuance of the notice of hearing, and will furnish a copy of the notice of hearing to any person who requests it thereafter. If a communication bears more than one signature, the Commission will give the notice to the person first signing unless the communication clearly indicates otherwise.

(c) The presiding officer will afford an interested State, local governmental body (county, municipality or other subdivision), and Federally-recognized Indian Tribe that has not been admitted as a party under §2.309, a reasonable opportunity to participate in a hearing. The participation of any State, local governmental body, or Federally-recognized Indian Tribe shall be limited to unresolved issues and contentions, and issues and contentions that are raised after the State, local governmental body, or Federally-recognized Indian Tribe becomes a participant. Each State, local governmental body, and Federally-recognized Indian Tribe shall, in its request to participate in a hearing, designate a single representative for the hearing. The representative shall be permitted to introduce evidence, interrogate witnesses where cross examination by the parties is permitted, advise the Commission without requiring the representative to take a position with respect to the issue, file proposed findings in those proceedings where findings are permitted, and petition for review by the Commission under §2.341 with respect to the admitted contentions. The representative shall identify those contentions on which they will participate in advance of any hearing held.

(d) If a matter is taken up by the Commission under §2.341 or *sua sponte*, a person who is not a party may, in the discretion of the Commission, be permitted to file a brief “*amicus curiae*.” Such a person shall submit the amicus brief together with a motion for leave to do so which identifies the interest of the person and states the reasons why a brief is desirable. Unless the Commission provides otherwise, the brief must

§ 2.316

be filed within the time allowed to the party whose position the brief will support. A motion of a person who is not a party to participate in oral argument before the Commission will be granted at the discretion of the Commission.

[69 FR 2236, Jan. 14, 2004, as amended at 77 FR 46592, Aug. 3, 2012]

§ 2.316 Consolidation of parties.

On motion or on its or his own initiative, the Commission or the presiding officer may order any parties in a proceeding who have substantially the same interest that may be affected by the proceeding and who raise substantially the same questions, to consolidate their presentation of evidence, cross-examination, briefs, proposed findings of fact, and conclusions of law and argument. However, it may not order any consolidation that would prejudice the rights of any party. A consolidation under this section may be for all purposes of the proceeding, all of the issues of the proceeding, or with respect to any one or more issues thereof.

§ 2.317 Separate hearings; consolidation of proceedings.

(a) *Separate hearings.* On motion by the parties or upon request of the presiding officer for good cause shown, or on its own initiative, the Commission may establish separate hearings in a proceeding if it is found that the action will be conducive to the proper dispatch of its business and to the ends of justice and will be conducted in accordance with the other provisions of this subpart.

(b) *Consolidation of proceedings.* On motion and for good cause shown or on its own initiative, the Commission or the presiding officers of each affected proceeding may consolidate for hearing or for other purposes two or more proceedings, or may hold joint hearings with interested States and/or other Federal agencies on matters of concurrent jurisdiction, if it is found that the action will be conducive to the proper dispatch of its business and to the ends of justice and will be conducted in accordance with the other provisions of this subpart.

10 CFR Ch. I (1–1–14 Edition)

§ 2.318 Commencement and termination of jurisdiction of presiding officer.

(a) Unless the Commission orders otherwise, the jurisdiction of the presiding officer designated to conduct a hearing over the proceeding, including motions and procedural matters, commences when the proceeding commences. If a presiding officer has not been designated, the Chief Administrative Judge has jurisdiction or, if he or she is unavailable, another administrative judge or administrative law judge has jurisdiction. A proceeding commences when a notice of hearing or a notice of proposed action under § 2.105 is issued. When a notice of hearing provides that the presiding officer is to be an administrative judge or an administrative law judge, the Chief Administrative Judge will designate by order the administrative judge or administrative law judge, as appropriate, who is to preside. The presiding officer's jurisdiction in each proceeding terminates when the period within which the Commission may direct that the record be certified to it for final decision expires, when the Commission renders a final decision, or when the presiding officer withdraws from the case upon considering himself or herself disqualified, whichever is earliest.

(b) The Director, Office of Nuclear Reactor Regulation, Director, Office of New Reactors, the Director, Office of Federal and State Materials and Environmental Management Programs, or the Director, Office of Nuclear Material Safety and Safeguards, as appropriate, may issue an order and take any otherwise proper administrative action with respect to a licensee who is a party to a pending proceeding. Any order related to the subject matter of the pending proceeding may be modified by the presiding officer as appropriate for the purpose of the proceeding.

[69 FR 2236, Jan. 14, 2004, as amended at 73 FR 5716, Jan. 31, 2008; 77 FR 46592, Aug. 3, 2012]

§ 2.319 Power of the presiding officer.

A presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and